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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,465

05/06/2008

John Michael Dooley

29793-1

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06/17/2011

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

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SUITE 2300

CLEVELAND, OH 44114-2378

EXAMINER

DRIGGERS-FOURNET, GWENDOLYN

ART UNIT

PAPER NUMBER

3679

NOTIFICATION DATE

DELIVERY MODE

06/17/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@beneschlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,465	<b>Applicant(s)</b> DOOLEY ET AL.	
	<b>Examiner</b> Gwendolyn Driggers	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-18 is/are pending in the application.
- 4a) Of the above claim(s) 8-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This communication is an Office action on the merits. Claims 1, 2, and 5-18, as amended, are currently pending. Claims 8-18 have been withdrawn from further consideration as drawn to a non-elected invention and claims 1, 2, and 5-7 have been considered below.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/11 has been entered.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Vyse et al (US 4,089,549; hereinafter Vyse).

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Regarding claim 1, Vyse discloses a tube retainer assembly (see figure 2) comprising:

a tube (53) (see figure 6 at (58)) having: an open end, a first external surface extending from the open end and having a first diameter (see figure 6),

a reduced diameter portion (66) adjacent the first external surface and having a second diameter less than the first diameter (see figure 6),

an elongated external surface adjacent the reduced diameter portion having a third diameter substantially equal to the first diameter (see figure 6),

wherein the reduced diameter portion defines a retention groove formed in and lying below the first external surface and the elongated external surface (see figure 6 at (66)); and

a holding clamp (16) configured as a flat plate having a substantially circular aperture (67b) formed therein and a slot (67a) extending outwardly from the substantially circular aperture without intersecting a periphery of the flat plate (see figure 2), wherein the reduced diameter portion of the tube is disposed in the slot (see figure 5).

Regarding claim 2, Vyse further discloses wherein the retention groove is annular (see figure 7).

Regarding claim 5, Vyse further discloses wherein the tube further comprises a sealing groove (61) formed in the elongated external surface thereof interposed

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between the retention groove and the open end of the tube (see figure 6), wherein the sealing groove is adapted to receive sealing means (60).

Regarding claim 6, Vyse further discloses wherein the sealing means is an O-ring (60).

Regarding claim 7, Vyse further discloses a device (12) having an inlet/outlet port (63) therein for receiving the tube (see figure 2).

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 2, and 5-7 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Driggers whose telephone number is (571)270-5740. The examiner can normally be reached on Mon-Fri 9:00a-5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gwendolyn Driggers  
/GD/  
Examiner  
Art Unit 3679  
6/10/11

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679